

APPEAL NO. 031557
FILED AUGUST 6, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 19, 2003. The hearing officer determined that: (1) the respondent (claimant) sustained a compensable injury on _____; and (2) the claimant had disability from May 29, 2002, through May 18, 2003. The appellant (carrier) has appealed on sufficiency of the evidence grounds. The claimant did not file a response.

DECISION

Affirmed.

The hearing officer did not err in making the complained-of determinations. The determinations involved questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN PROTECTION INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Edward Vilano
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

DISSENTING OPINION:

I respectfully dissent with regard to the affirmance of the hearing officer's disability determination. In his discussion, the hearing officer emphasized the claimant's testimony that he could return to his former job and the fact that the claimant worked on his land in a rural community as being indicative that the claimant's disability had ended. However, the hearing officer went on to say "[b]ecause he believes he can return to work, and no other reasonable date was established as to when he believes he was physically able to return to work, I've determined that his disability ended yesterday, May 18, 2003." In my opinion the hearing officer's choice of the day before the hearing as the date that disability ended is arbitrary and without evidentiary support. As the fact finder, the hearing officer has wide discretion in resolving a disability issue; however, that discretion is not unfettered. I believe it was incumbent upon the hearing officer to determine a disability ending date that was supported by the record. In my opinion, the hearing officer has not done so in this case and I would remand the disability issue for the hearing officer to determine at what point the claimant's condition improved such that his disability ended.

Elaine M. Chaney
Appeals Judge